

**R-09-0038**  
**REVISED PROPOSAL**

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**RULES OF THE SUPREME COURT**

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**Current Rule 38(d) is abrogated and replaced with the following:**

**Rule 38(d). Clinical Law Professors and Law Students**

1. *Purpose.* This rule is adopted to encourage law schools to provide clinical instruction of varying kinds and to facilitate pro bono opportunities for students.

2. *Definitions.*

A. “Accredited law school” means a law school either provisionally or fully approved and accredited by the American Bar Association.

B. “Certified limited practice student” is a law student who holds a currently effective Arizona Supreme Court certification as a certified limited practice student.

C. “Dean” means the dean of the accredited law school in which the student is enrolled, or the dean’s designee.

D. “Designated attorney” is an attorney admitted to Arizona full or limited practice who is authorized and selected by a supervising attorney to supervise the certified limited practice student as permitted by these rules.

E. “Personal presence” means the supervising attorney or designated attorney is in the physical presence of the certified limited practice student.

F. “Rules” means Rule 38, Rules of the Supreme Court.

G. “Supervising attorney” is an attorney admitted to Arizona full or limited practice who agrees in writing to supervise the certified limited practice student pursuant to these rules and whose name appears on the application for certification or recertification.

H. “Volunteer legal services program” means a volunteer legal services program managed by an approved legal services organization in cooperation with an accredited law school. Approved legal service organizations are defined in paragraph (e)(2)(C) of this rule.

3. *General Provisions.*

A. *Limited Bar Membership.* To the extent a professor or a student is engaged in practice of law under this rule, the professor or student shall, for the limited purpose of performing professional services authorized by this rule, be deemed an active member of the state bar (but not required to pay fees).

B. *Nonapplicability of Attorney Discipline Rules to Terms of the Certification.* The procedures otherwise provided by law or court rule governing the discipline of lawyers shall not be applicable to the termination of the certification of a clinical law professor or a limited practice student pursuant to this rule. Termination of certification shall be without prejudice to the privilege of the professor or the student to apply for admission to practice law if the professor or the student is in other respects qualified for such admission.

C. *Privileged Communications.* The rules of law and of evidence relating to privileged communications between attorney and client shall govern communications made or received by and among professors, supervising attorneys (and designated attorneys), and certified limited student practice students. All persons participating in any program of instruction or professional activity for which a student is certified under these rules are enjoined from disclosing privileged or confidential communications, whether in the implementation of a course of instruction or otherwise.

#### 4. *Clinical Law Professors.*

A. *Activities of Clinical Law Professors.* A clinical law professor not a member of the state bar, but certified pursuant to this rule may appear as a lawyer only in connection with supervision of a clinical law program approved by the dean and faculty of an accredited law school in Arizona. A clinical law professor may appear in any court or before any administrative tribunal in this state in any of the matters enumerated in paragraph (d)(6)(C) of this rule on behalf of any person, if the person on whose behalf the appearance is being made has consented in writing to that appearance. Such written consent shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal.

B. *Requirements and Limitations for Clinical Law School Professors.* In order to make an appearance as a lawyer pursuant to this rule, the clinical law professor must:

i. be employed as a faculty member of an accredited law school in Arizona for the purpose, *inter alia*, of instructing and supervising a clinical law program approved by the dean and faculty of such law school;

ii. be admitted by examination to the bar of this state or another state or the District of Columbia;

iii. neither ask for nor receive any compensation or remuneration of any kind for such services from the person on whose behalf the services are rendered; and

iv. certify in writing that the clinical law professor has read and is familiar with the current Supreme Court rules relating to attorney conduct, including the Arizona Rules of Professional Conduct and the Lawyer's Creed.

C. *Certification.* The certification shall be signed by the dean of the law school on the form prescribed by the clerk of this Court and shall be filed with the clerk and the state bar. The certification shall remain in effect until withdrawn.

D. *Duty to Ensure Adequate Supervision and Guidance of Certified Limited Practice Student.* It shall be the responsibility of the clinical law professor to ensure that certified limited practice students receive adequate supervision and guidance while participating in the law school's clinical law program.

E. *Withdrawal or Termination of Certification.*

i. The dean may terminate a certification of a clinical law professor at any time by filing a notice to that effect, with or without stating the cause for withdrawal, with the clerk of this Court, who shall forthwith mail copies thereof to the clinical law professor and the state bar.

ii. The Court may terminate the certification of a clinical law professor at any time without cause and without notice or hearing by filing notice of the termination with the clerk of this Court and with the state bar.

## 5. *Supervising Attorneys.*

A. *Requirements.* A supervising attorney who is not a clinical law professor shall be an active member of the state bar, and, before supervising a certified limited practice student shall have practiced law or taught law in an accredited law school as a full-time occupation for at least two years.

B. *Duties.* A supervising attorney shall:

i. assume personal professional responsibility for any work performed by the certified limited practice student while under his or her supervision;

ii. assist and counsel the certified limited practice student in the activities authorized by these rules and review such activities with the certified limited practice student, all to the extent required for the proper practical training of the certified limited practice student and the protection of the client;

iii. read, approve, and sign any pleadings, briefs or other similar documents prepared by the certified limited practice student before they are filed, and read and approve any documents prepared by the certified limited practice student for execution by any person (a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the supervising attorney shall still provide general supervision);

iv. provide supervision to the certified limited practice student as required by these rules (a designated attorney may, in the place of the supervising attorney, perform the obligation set forth in this subparagraph, but the supervising attorney shall still provide general supervision); and

v. promptly notify the clerk of the Court in writing if his or her supervision of the certified limited practice student has or will cease before the date indicated on a notice of certification.

#### 6. *Practical Training of Law Students*

A. *Law Student Eligibility for Limited Practice Certification.* To be eligible to become a certified limited practice student, a law student applicant must:

i. have successfully completed legal studies amounting to at least two semesters, or the equivalent academic hour credits if the school or the student is on some basis other than a semester, at an accredited law school;

ii. neither ask for nor receive any compensation or remuneration of any kind for services rendered by the certified limited practice student from the person on whose behalf the services are rendered, but this shall not prevent a supervising lawyer, legal aid bureau, law school, public defender agency, or the state from paying compensation to the eligible law student, nor shall it prevent any such lawyer or agency from making such charges for its services as it may otherwise properly require;

iii. certify in writing that the student has read and is familiar with the current Supreme Court rules relating to attorney conduct, including the Arizona Rules of Professional Conduct and the Lawyer's Creed;

iv. be certified by the dean as being in good academic standing, of good character, and as having either successfully completed or being currently enrolled in and attending academic courses required by the law school; and

v. be contemporaneously enrolled in an educational and clinical law program approved by the dean and faculty of an accredited law school for the duration of the student limited

practice certification. This requirement is applicable to all who apply for student limited practice certification.

*B. Application for Limited Practice Certification.*

i. All applications for student limited practice certification or requests to change or add a supervising attorney or extend the period of certification pursuant to these rules must be submitted on a form provided by the clerk of the Court, to the clerk, together with any designated appropriate nonrefundable processing fee.

ii. The application for certification shall require the signature of the applicant, the dean of the accredited law school in which the applicant is enrolled, and the signature of the supervising attorney.

iii. The applicant shall attest that he or she meets all of the requirements of the rules; shall immediately notify the clerk of the Court if he or she no longer meets the requirements of the rules; and has read, is familiar with, and will abide by the Rules of Professional Conduct of the State of Arizona, the Lawyer's Creed, and these rules.

iv. The dean shall attest that the applicant meets the requirements of these rules; that he or she shall immediately notify the clerk of the Court if the certified limited practice student no longer meets the requirements of these rules; and that he or she has no knowledge of facts or information that would indicate that the applicant is not qualified by ability, training, or character to participate in the activities permitted by these rules.

v. The supervising attorney shall attest that he or she has read, is familiar with, will abide by, and will assume responsibility under the requirements of these rules.

*C. Permitted Activities and Requirements of Limited Practice Certification; Physical Presence of Supervising Attorney.*

i. *Court and Administrative Tribunal Appearances.* A certified limited practice student may appear in any court or before any administrative tribunal in this state on behalf of any person if the person on whose behalf the student is appearing has consented in writing to that appearance and the supervising attorney has also indicated in writing approval of that appearance. In each case, the written consent and approval shall be filed in the record of the case and shall be brought to the attention of the judge of the court or the presiding officer of the administrative tribunal. In addition, the certified limited practice student shall orally advise the court on the occasion of the student's initial appearance in the case of the certification to appear as a law student pursuant to these rules. A certified limited practice student may appear in the following matters:

a. *Civil Matters.* In civil cases in justice, municipal, and magistrate courts, the supervising lawyer (or designated lawyer) is not required to be personally present in court if the person on whose behalf an appearance is being made consents to the supervising lawyer's absence.

b. *Criminal Matters on Behalf of the State.* In any criminal matter on behalf of the state or any political subdivision thereof with the written approval of the supervising attorney (or designated attorney), the supervising attorney (or designated attorney) must be personally present, except when such appearance is in justice, municipal, or magistrate courts.

c. *Felony Criminal Defense Matters.* In any felony criminal defense matter in justice, municipal, and magistrate courts, and any criminal matter in superior court, the supervising attorney (or designated attorney) must be personally present throughout the proceedings and shall be responsible for the manner in which they are conducted.

d. *Misdemeanor Criminal Defense Matters.* In any misdemeanor criminal defense matter in justice, municipal, and magistrates courts, the supervising attorney (or designated attorney) is not required to be personally present in court, so long as the person on whose behalf an appearance is being made consents to the supervising attorney's absence; however, the supervising attorney shall be present during trial.

e. *Appellate Oral Argument.* A certified limited practice student may participate in oral argument in the Arizona Supreme Court and the Arizona Court of Appeals, but only in the presence of the supervising attorney (or designated attorney) and with the specific approval of the court for that case.

Notwithstanding anything hereinabove set forth, the court may at any time and in any proceeding require the supervising attorney (or designated attorney) to be present for such period and under such circumstances as the court may direct.

ii. *Other Client Representation Activities.* Under the general supervision of the supervising attorney (or designated attorney), but outside his or her personal presence, a certified limited practice student may:

a. prepare pleadings and other documents to be filed in any matter in which the certified limited practice student is eligible to appear, but such pleadings or documents must be signed by the supervising attorney (or designated attorney);

b. prepare briefs, abstracts, and other documents to be filed in appellate courts of this state, but such documents must be signed by the supervising attorney (or designated

attorney);

c. provide assistance to indigent inmates of correctional institutions or other persons who request such assistance in preparing applications and supporting documents for post-conviction relief, except when the assignment of counsel in the matter is required by any constitutional provision, statute, or rule of this court (if there is a lawyer of record in the matter, all such assistance must be supervised by the lawyer of record, and all documents submitted to the court on behalf of such a client must be signed by the lawyer of record and the supervising attorney (or designated attorney));

d. render legal advice and perform other appropriate legal services, but only after consultation with and upon the consent of the supervising attorney (or designated attorney).

iii. *Other Non-Representation Activities.* A certified limited practice student may perform any advisory or non-representational activity that could be performed by a person who is not a member of the state bar, subject to the approval by the supervising attorney (or designated attorney). In connection with a volunteer legal services program and at the invitation and request of a court or tribunal, a certified limited practice student may appear as a law student volunteer to assist the proceeding in any civil matter, provided that

a. the assistance is given to an otherwise unrepresented individual in an uncontested proceeding without entering an appearance as counsel;

b. the student's supervising attorney is associated with the particular volunteer legal services program;

c. the certified limited practice student has received the written consent and acknowledgment of non-representation by the unrepresented person, which written consent shall be obtained by the volunteer legal services program and brought to the attention of the court.

D. *Use of the Title "Certified Limited Practice Student."*

i. In connection with activities performed pursuant to these rules, a certified student may use the title "Certified Limited Practice Student" only and may not use the title in connection with activities not performed pursuant to these rules.

ii. When a certified limited practice student's name is printed or signature is included on written materials prepared pursuant to these rules, the written material must also state that the student is a certified limited practice student pursuant to these rules, state the name of the supervising attorney, be signed by the supervising attorney, and otherwise comply with

these rules.

iii. A certified limited practice student shall not hold himself or herself out as a regularly admitted or active member of the state bar.

iv. Nothing in these rules prohibits a certified limited practice student from describing his or her participation in this program on a resume or letter seeking employment as long as the description is not false, deceptive, or misleading.

*E. Duration of Certification.* Certification of a certified limited practice student shall commence and terminate on the dates indicated on the notice of certification, as determined by the dean. The duration of a student's limited practice certificate must be co-extensive with the contemporaneous student enrollment in a law school course or clinical law program that supports the student limited practice certificate. The certificate will remain in effect for the period specified on the notice of certification unless sooner terminated, or until a revised or amended certificate containing a new termination date is issued. The certificate shall terminate on its expiration date or the earliest of the following occurrences:

i. *Termination by the Student.* The certified limited practice student may request termination of the certification in writing, or notify the clerk of the Court that he or she no longer meets the requirements of this rule. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

ii. *Termination by the Supervising Attorney.* The supervising attorney may notify the clerk of the Court in writing that his or her supervision of the certified limited practice student will cease prior to the date specified in the notice of certification. In such event the clerk shall send written notice to the student, the student's supervising attorney, the dean, and the state bar, and the dean may issue a modified certification reflecting the substitution of a new supervising attorney, as necessary.

iii. *Termination by the Dean.* A certification of student limited practice may be terminated by the dean any time, without cause and without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney, or designated attorney fails to comply with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

iv. *Termination by the Arizona Supreme Court.* A certification of student limited practice may be terminated by the Arizona Supreme Court any time, without cause and



without notice or hearing, by filing notice of the termination with the clerk of the Court. A certification of student limited practice shall be terminated if one or more of the requirements for the certification no longer exists or the certified limited practice student, supervising attorney, or designated attorney fails to comply with any provision of these rules or any other pertinent statute, rule, or regulation. In the event of termination, the clerk of the Court shall send written notice to the student, the student's supervising attorney, the dean, and the state bar.

v. When the certified limited practice student, the dean, and the supervising attorney all agree to a an extension of the limited practice certificate beyond the end of the supporting contemporaneous law school course or clinical law program to allow the student to complete work on a specific case or project, an amended certificate of student limited practice may be issued.

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